

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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| RICHARD HOLLIHAN, JR., |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Civil Action No. 07-102J |
| |) | Judge Arthur J. Schwab |
| GERALD ROZUM, Superintendent; THE |) | Magistrate Judge Amy Reynolds Hay |
| DISTRICT ATTORNEY OF ALLEGHENY) |) | |
| COUNTY; and THE ATTORNEY |) | |
| GENERAL OF THE STATE OF PENN- |) | |
| SYLVANIA; |) | |
| |) | |
| Respondents |) | Re: Dkt. [7] |

MEMORANDUM ORDER

A report, Dkt. [3], was filed in this habeas case, recommending dismissal of the petition because this court lacks subject matter jurisdiction given that the petition is second or successive. After Petitioner filed objections, Dkt. [4], this Court adopted the report and recommendation. Dkt. [5]. Petitioner then filed a document entitled “Motion to Vacate”, Dkt. [7], which sought to have this court vacate its earlier order that dismissed this habeas petition for lack of subject matter jurisdiction and which sought to have this Court stay this case pending Petitioner’s filing in the Court of Appeals a motion, seeking permission to file a second or successive habeas petition. The court will construe this motion as a motion for reconsideration and as such, order that it be **DENIED**. Even if the Court of Appeals permits Petitioner to file a second or successive habeas petition, he may do so then, **after** permission has been granted. Accordingly, the order dismissing the petition was proper insofar as Petitioner did not have, at the time of filing the instant petition, any permission to do so. Hence, there is no legal ground for vacating the earlier order.

SO ORDERED this 16th day of July, 2007.

s/Arthur J. Schwab

Arthur J. Schwab

United States District Judge

cc: Richard Hollihan, Jr.
AJ-0676
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